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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,845	12/09/2003	Arnold H. Bramnick	BOC9-2003-0040 (410)	5227
40987 7590 02/18/2009 Novak Druce + Quigg LLP CityPlace Tower, 525 Okeechobee Blvd. Fifteenth-Floor WEST PALM BEACH, FL 33401				
EXAMINER JOSEPH, TONYA S				
ART UNIT 3628		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/730,845

**Applicant(s)**

BRAMNICK ET AL.

**Examiner**

TONYA JOSEPH

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Status of Claims***

Claim 1 has been previously examined. No claims have been added. Claim 1 has been amended. No claims have been cancelled. Thus, claim 1 is again presented for examination.

### ***Response to Arguments***

#### **35 USC 101**

Although Applicant has amended the preamble of the claim to recite, "a computer implemented" method, this amendment is merely a nominal recitation of a computer. it is still unclear which parts of the method are performed by the apparatus. The Examiner suggests amending the body of the claims to specify the apparatus performing the method.

#### **35 USC 103**

Applicant's arguments filed 11/24/2008 have been fully considered but they are not persuasive

Applicant argues that Slivka does not teach obtaining real time passenger data for each of the passengers from databases including a customer relationship management database (CRM). The Examiner disagrees. Applicant's specification describes passenger data as any passenger related information (see para. 8). Slivka's passenger flight disruption data, which is updated in real time, is also passenger related data (see para. 36). Furthermore, Applicant's arguments regarding the customer relationship management database (CRM) fail to comply with 37 CFR 1.111(b) because

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they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Applicant further asserts that Slivka does not disclose weighing each element of the passenger data using a predetermined set of weights determined based upon expressed preferences of said airline; determining a value score based upon the weighted passenger data elements and assigning or associating numerical weights with different data elements. The Examiner disagrees. Slivka plainly teaches that the travel service provider may employ rules that rank certain types of passengers. Table 3 then describes a passenger prioritization chart with passenger rankings and passenger profile information (see para. 24, 26 and Table). I.e. a physically challenged unaccompanied minor has a passenger rank of 1 as opposed to a political VIP who has a passenger rank of 4.

Applicant further asserts that Ingram was forced to provide accommodations and meals as part of an emergency, not as part of a normal rescheduling scheme. The Examiner notes: The circumstances under which Ingram provided meals and accommodations to passengers is irrelevant. Ingram was relied upon to show the state of the art at the time of invention. Ingram shows that providing meals and accommodations to displaced passengers was old and well known at the time of Applicant's invention. One of ordinary skill in the art would have known to combine the teachings of Slivka, Ingram and Barnes to arrive at Applicant's claimed invention.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., Barnes does not teach that the residual value of a ticket should be one of the elements of the passenger data used for determining re-booking passenger

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candidates.) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Accordingly, Applicant's arguments are not persuasive and the rejections are maintained.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slivka et al., U.S. Publication No. 2003/0225600 in view of Ingram, "Travellers Leave for Portugal after 24- hour Wait for Plane", *The Globe and Mail* (Canada), June 26, 1986, pg. A21 and further in view of Barnes et al. U.S. Pre-Grant Publication No. 2004/0010427 A1.

3. As per Claim 1, Slivka teaches determining real time a plurality of alternative flights for said passengers offered by an airline operating said cancelled flight and other airlines based on databases including flight inventory data and reservations data on said canceled airline and other airlines (see para. 44, 48; 32-33 and para. 15);

determining re-booking passenger candidates including the steps of (see para.15):

obtaining real time passenger data for each of said passengers from databases (see para. 36) including a customer relationship management (CRM) database, an accounting database, and a loyalty or frequent flyer database (see para. 24 and 38-39,

Examiner is interpreting the passenger prioritization rules, the passenger fare calculator and the frequent flyer rules which are rules determined by the rules engine and stored in a database as a customer relationship management (CRM) database, an accounting database, and a loyalty or frequent flyer database respectively), wherein said passenger data comprises elements including a passenger re-booking cost (see para. 39) and a passenger lifetime value (see para. para. 24), wherein the passenger re-booking cost includes a cost to said airline which has cancelled the flight to re-book said passenger on one of said alternative flights offered by said other airlines (see para. 14-15); and wherein the passenger lifetime value includes at least one of a frequent flyer status of the passenger and a ticket purchase history of the passenger (see para. 35); weighting passenger data using a predetermined set of weights determined based upon expressed preferences of said airline (see para. 24-25, Tables 1-2 and para. 40-42); for each of said passengers, determining a value score' based upon the weighted passenger data elements (see para. 44); comparing said weighted scores for said passengers with one or more rules wherein the rules include at least one of a descending revenue impact on the airline, a lifetime value of the passenger, and a most favorable value score; and offering at least a portion of said alternative flights to the determined re-booking passenger candidates based upon said comparing step (see para. 24, 35, 37 and 44).

Slivka does not explicitly teach the limitation taught by Ingram and any accommodation costs associated with each one of said alternative flights offered by said airline including hotel and meal charges, of accommodating the passenger until said alternative flight

offered by the airline is available (see para. 3 and 8-9). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the invention of Slivka to include the teachings of Ingram to accommodate disrupted passengers and maintain customer satisfaction. Slivka in view of Ingram does not explicitly teach the limitation taught by Barnes wherein passenger data comprises a remaining unflown ticket value (see para. 39). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the methods of Slivka and Ingram to include the teachings of Barnes to issue a partial refund to a customer.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TONYA JOSEPH whose telephone number is (571)270-

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1361. The examiner can normally be reached on Mon-Fri 7:30am-5:00pm First Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571 272 0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tonya Joseph  
Examiner  
Art Unit 3628

/John W Hayes/  
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